

STATE OF MAINE  
CONNECTME AUTHORITY

December 28, 2006

CONNECTME AUTHORITY  
ConnectME Authority Operation  
(Chapter 101)

ORDER PROVISIONALLY  
ADOPTING RULE

BRETON, Chair; DAVIS, WILSON, THOMPSON, and ADAMS, Members

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## I. SUMMARY

In this rulemaking, we provisionally adopt Chapter 101, ConnectME Authority Operation, as required by Title 35-A Chapter 93. This is a major substantive rulemaking in which the ConnectME Authority (Authority) provisionally adopts the rule, which is then sent to the Legislature for review and approval before the Authority adopts the final rule (5 M.R.S.A. § 8071.)

## II. BACKGROUND

On August 23, 2006, “The Advanced Technology Infrastructure Act” (35-A M.R.S.A. §§ 9201-9215, and 36 M.R.S.A. § 2017) (The Act) became effective. The purpose of the Act is to stimulate investment in Advanced Communications Technology Infrastructure to increase access to broadband and wireless services for all Maine communities, especially rural communities. The statute also authorizes the Authority to require annual contributions, up to .25 percent of instate revenues from communications services provided in Maine, to a ConnectME Fund to provide funding for the Authority and support of broadband development projects.<sup>1</sup>

By Notice of Rulemaking dated September 27, 2006, we initiated a rulemaking to adopt Chapter 101, a rule that describes the operation of the Authority. A

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<sup>1</sup> The Act is contained in P.L. 2005, Ch 665, Section 3. P.L. 2005, Ch 665, Section 6, authorizes a temporary transfer of \$500,000 from the Maine Universal Service Fund to the ConnectME Fund after the provisionally adopted rule is approved by the Legislature.

public hearing was held on October 18, 2006, at which nine people provided oral comments,<sup>2</sup> most of whom followed up with written comments.

We received written comments from: Aroostook Internet; AT&T Communications of New England AT&T); Peter J. Brown; Cingular Wireless; Sam Elowitch; the Maine Internet Service Providers Association (MISPA); the New England Cable and Telecommunications Association (NECTA); Mainely Wired; Sprint Nextel; SJV Wireless; the Telephone Association of Maine (TAM); T-Mobile USA (T-Mobile); United States Cellular (US Cellular); Verizon Maine; and Verizon Wireless.

We also received two late-filed supplemental comments from TAM, on November 30, 2006, and December 5, 2006.

### **III. DISCUSSION OF COMMENTS**

This part of the order summarizes the comments received in this rulemaking followed by a response. It is divided into nine sections that follow the format of the proposed rule: A. General Comments; B. Section 1 – Purpose; C. Section 2 – Definitions; D. Section 3 – Required Filing of Data; E. Section 4 – Protection of Confidential Information; F. Section 5 – Designation of Broadband Service and Eligible Areas; G. Section 6 – ConnectME Authority Support; H Section 7, ConnectME Fund; and I. Section 8, Waiver of Provisions of Chapter.

#### A. General Comments

Summarized below are comments that were not related to a specific section of the proposed rule.

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<sup>2</sup> Ben Sanborn, Telephone Association of Maine; Martin Rothfelder, T-Mobile; Jim Cohen, Verizon Wireless; Dan Riley, Sprint Nextel; Kim Kenway, U.S. Cellular; David Hill, Chebeague Island; Peter Petersen, Mainely Wired; Nelson Geel, Axiom Technologies; and Fletcher Kittredge, GWI.

Axiom Technologies stated that there are some tried and true models for serving rural unserved areas and that the Authority should look at how many households are reached per dollar and use a combination of wireless and wired solutions. Axiom also indicated that funding was always a challenge for the company.

David Hill, resident of Chebeague Island, provided an updated report about the wireless broadband system on Chebeague Island. Hill said that there were 23-24 existing installations, with 50 more requests waiting for service.

All wireless carriers touted their recent expansions in Maine and warned the Authority not to take any action that would inhibit their current rapid, market driven expansion. Cingular stated its concern about new obligations, particularly with regard to reporting, and recommends that “[a]ny new obligations resulting from this rulemaking should be supported by a cost/benefit framework.”

Sprint Nextel stated that the rules as drafted will not “aid the Authority or wireless carriers in expanding service in Maine”. Instead the Authority should rely on market forces and tax incentives. Verizon Wireless commented that the Authority should minimize the risk of interfering with free and open competition.

US Cellular said that the Authority should work with the “wireless ETCs” (eligible telecommunications carriers) to maintain federal Universal Service Fund support for Maine’s rural wireless carriers. While the Authority will provide support, there are other state agencies more involved in federal USF issues and we will diligently watch to ensure that efforts are not duplicated.

Sam Elowitch commented that the rule should discuss the responsibilities of the Authority’s paid staff and how they are to be recruited, hired, trained, and compensated. Operational details such as staffing practices are generally not included in rules. Until we begin to collect data and review applications for broadband extensions, it is difficult to predict staffing needs. Subsection 9203(6) of the Act

specifies that the Authority may obtain staff resources that may not exceed the equivalent of three full-time employees. We will comply with this requirement and use it as a guide to determine our resource needs.

B. Section 1 – Purpose

Section 1 of the proposed rule defines the purpose of the Authority and lists the 12 duties specified in the Act.

In its comments MISPA, noted that there were several instances where the proposed rule deviates from the specific language of the statute. For example, subsection 1(1) omits a significant portion of the statement found in section 9204(1) which could cause confusion.<sup>3</sup> TAM and Verizon Maine also believe that this section of the rule should more closely follow the actual language of the statute. TAM also questions the addition of the parenthetical “cellular” to subsection 1(3). NECTA specifically agrees with TAM’s point.

We added the word “cellular” to this section, and in other places, to make clear the legislative intent to distinguish broadband service from mobile communications service. While the word “cellular” is much more descriptive to the average citizen, it is true that it is not in the statute and we have removed it. We also added the full language from the Act to this section.

TAM commented that the statutory language in subsection 9204(2)(f), which states that the Authority will “(C)over reasonable administrative costs of the Authority,” should be included in the list of duties in this section of the proposed rule. We believe that the language of the Act is clear and do not believe it would add any further clarification to put it in the rule.

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<sup>3</sup> The description of the designation of unserved and underserved areas is more fully described later in the rule in section 5. We do indicate on line four of section 1 of the rule that the duties of the Authority are stated in section 9204 of the Act.

**C. Section 2 – Definitions**

Section 2 of the proposed rule contains definitions of terms used in the proposed rule, many of which come from the Act itself.

A number of commenters (TAM, NECTA, and Verizon) disagreed with the definition of “Communications Service,” particularly the deviation from the specific definition contained in the Act. The change was intended to clarify the legislative intent that all retail satellite and data services are included regardless of type of provider. In response to the comments and to prevent confusion we changed the definition of Communications Service to the exact language in the Act.

There were several comments on the “broadband service provider” definition. Sprint Nextel and Verizon Wireless said that the definition of “broadband service provider” should be clarified to exclude mobile telecommunications providers. T-Mobile recommends that the Authority change the definitions of “broadband service provider” and “mobile communications service provider” to be consistent with the federal definitions.

The wireless carriers’ concerns highlight the growing trend of convergence of technologies. Though cellular “broadband” service may soon be available in southeastern Maine on a limited basis and the technology exists to provide data service at “broadband-like speeds” over a cellular network, it is unclear whether this service would be “Broadband Service” as defined by the rule or “data service” provided by a “Mobile Communications Service Provider” and assessed only on a voluntary basis. Determining which definition this type of service falls under (or any future services provided by the “traditional wireless telephone” providers) also has reporting implications, discussed in more detail below. Neither of the definitions is included in the Act and broadband service over cellular networks was not fully considered by the Telecommunications Infrastructure Steering Committee – it was not widely available at the time. We believe the definitions are sufficient for our purposes at this time.

Finally, a number of commenters noted that the definition of Certificate of Qualification was incomplete. It was inadvertently truncated and has been corrected in the revised rule.<sup>4</sup>

D. Section 3 – Required Filing of Data

To carry out its required duties, the Authority will need accurate and current data.

NECTA believes that all providers of communications services should file their FCC Form 477 data, not just broadband service providers. We agree, and have revised the rule so that every entity that files a FCC 477 also files it with the Authority, which will provide a more complete picture of the market without being a significant burden on the filers.

MISPA noted that there is no consequence for failure to file the required information and suggests that failure to file or significant tardiness in filing should make the entity ineligible for grants or contracts with the Authority. While we feel that the Authority needs the requested information on a timely basis, the Authority is not authorized by the Act to impose penalties. However, we will consider including in the application evaluation process a carrier's history of compliance with Authority requirements.

AT&T stated that many communications service providers do not normally collect the pricing or customer count data at an offering level and doing so would require the companies to develop methods and systems, at considerable cost. TAM stated that the term "target customer" was unclear. Verizon, NECTA, and TAM also agreed that

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<sup>4</sup> "Certificate of Qualification" means the certificate issued to an applicant by the Authority in accordance with the requirements of section 3 of Maine Revenue Services Rule No. 324 (18-125 CMR 324) as a prerequisite to applying for tax reimbursement from Maine Revenues Services in accordance with 36 M.R.S.A. § 2017.

the additional data requirements could be costly to provide because they do not track customers by whether the customer is a residential or business customer. They suggested that subsections 3(A)(3)(c), (e), and (f) be eliminated. We agree and have eliminated those three subsections with the understanding that the Authority may modify its data requirements in the future as needs change.

Mainely Wired stated that small operators should be exempt from reporting requirements because it is much more burdensome on small companies with limited resources. Mainely Wired, and other small operators, operate on unlicensed bands and are not required to file the FCC Form 477. For the Authority to effectively monitor the broadband market in Maine, it needs reasonable and timely data. We understand that any new reporting requirements can be a challenge, especially on small companies, but we will require that all communications service providers not required to file the FCC Form 477 submit the information requested in subsection 3(A)(3) as revised. Companies that believe that requirement is onerous may request a waiver under section 8 of the rule.

Many of the wireless carriers also commented on this section. The wireless carriers were universal in their criticism of subsection 3(B) which requires, among other types of information, two maps of signal strength coverage. Cingular urges the Authority not to adopt subsection 3(B). Instead, the Authority should rely on existing information to the extent possible. In particular, the Authority should use carriers' web sites to determine their coverage areas. Many providers, including Cingular, have "street level" maps available on their web pages. Cingular agrees that the FCC Form 477 data should be used by the Authority but does not agree that the providers should have to file it with the Authority. Instead the Authority should take advantage of the FCC's data sharing program.

Sprint Nextel states that the Authority has chosen to "regulate...an investment in coverage," and that this is a mistake. Market forces are already working to make carriers expand coverage. Instead of the reporting requirements in the

proposed rule, Sprint Nextel recommends that the Authority consult the FCC's Annual CMRS Competition Report (which provides county by county counts of wireless providers) and the carriers' web sites. Sprint Nextel's web site includes street level data about its coverage. If the Authority requires more detailed data to award funds, only the applicants for those funds should bear the burden of providing additional coverage maps. Sprint Nextel also recommends that subsection 3(B)(3) be removed because the data that Mobile Communications Service Providers would be required to provide is redundant and unnecessary. In addition, it would create an administrative burden on the Mobile Communications Service Providers without furthering the goal of expanding wireless coverage.

Verizon Wireless states that the requirements of section 3(B) (coverage maps) should be removed because it is unprecedented and the Authority can not guarantee adequate security (in particular with respect to Authority and Advisory Board members) for the very confidential data. In addition, the data, if it were provided, would be quickly out of date. Verizon Wireless argues that if the Authority must have coverage maps to award funding, it should limit the request to the specific proposal area and only the grant applicant should provide the data. Otherwise, the Authority should rely on data sources that are already available. In particular, Verizon Wireless recommends that the Authority use the FCC's Annual CMRS Competition Report (county by county data) and carrier web sites.

T-Mobile also recommends eliminating subsection 3(B) because it would create filing requirements that are costly and burdensome. The Authority should not require mobile communications service providers to provide the highly confidential data because it is unnecessary. The Authority should use the FCC's Annual CMRS Competition Report (county by county data) and carrier web sites. T-Mobile's web site provides street level coverage data. Instead of requiring all providers to submit coverage map data, T-Mobile suggests that any applicants for funds should bear the burden of providing coverage data for the area that the proposed project would cover.

T-Mobile also states that the additional data requirements in subsections 3(A)(3) and 3(B)(3) should also be eliminated. The Authority should not burden the providers with the filing requirements because some of the data is available in the FCC's CMRS Report and 477 Report and some of the data, such as the number of business and residential customers, the carriers might not have.

US Cellular stated that it agrees with the objective of reducing regulatory burdens that other providers have included in their comments, and that if the Authority determines that alternative information already available to it will meet its needs, then it should eliminate the filing requirement in subsection 3(B) of the draft rule. However, if subsection 3(B) is retained, US Cellular strongly endorses the confidentiality requirements in section 4 of the draft rule.

While there may be no annual state or federal requirement to file coverage maps, we do not believe that the requirements described in the proposed rule are unprecedented. Last year, in response to requests from the Wireless Telecommunications Infrastructure Board,<sup>5</sup> five carriers<sup>6</sup> provided data that allowed an aggregate coverage map to be created.

The data available in the FCC's CMRS Report that several of the commenters urge the Authority to use will not be detailed enough to allow the Authority to determine whether an area is unserved and underserved nor will it allow the Authority to monitor coverage as required by the Act. For example, in the FCC's report released September 29, 2006, the map titled "Mobile Telephone Operator Coverage Estimated by County" shows that Aroostook County has three mobile telephone operators. It does not indicate whether the three operators have overlapping territories or exclusive territories nor does it indicate how much of the area of Aroostook County is actually covered. There may be three carriers in one town and the remainder of the county has

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<sup>5</sup> The WTIB was a precursor to this ConnectME Authority.

<sup>6</sup> The five carriers were: US Cellular, Verizon Wireless, Unicel, Cingular, and T-Mobile.

no service. In addition, if the next annual report shows that Aroostook has three mobile telephone operators, it will not be clear whether and by how much their coverage has improved or deteriorated.

Many of the wireless carriers, in particular Sprint Nextel and T-Mobile, stated that the section 3 requirements should be eliminated because they are unnecessary and costly. Nearly all of the commenter's emphasized the "street level" coverage data available on their web pages, which suggests that someone in the organization is very experienced with mapping software. We do not believe it would be a burden to produce the data required by the rule. If, however, an individual company finds that it would be a major effort to supply the maps, the company may file a waiver under section 8 of the rule. The major difficulty with using the web page maps "as is" is that it would be most useful for the Authority to look at coverage statewide and to be able to see all of the coverage in one place. This is not possible with the individual company web pages. The Authority needs uniform data from all providers to effectively monitor wireless coverage.

As to Sprint's and T-Mobile's objections regarding subsection 3(B)(3) of the rule, we find that all the data listed in subsection 3(B)(3) is needed to carry out the duties in subsection 9204(2)(A) of the Act and to allow the Authority to make informed decisions. However, if that data is reported to the FCC, a carrier could submit a copy of its FCC filing to the Authority rather than generate new reports.

E. Section 4 – Protection of Confidential Information

The Act directs the Authority to protect any information that could compromise the security of public utility systems to the detriment of the public interest and information that is of a competitive or proprietary nature.

Many of the commenters are concerned about the highly confidential and proprietary nature of the requested data and the Authority's ability to safeguard the

data. Many state agencies, including the Maine Public Utilities Commission (PUC) and the Maine State Chief Information Officer's Office, are experienced in handling national security "confidential" data and could certainly lend their expertise to the Authority in developing appropriate security measures and administrative and procedural safeguards.

MISPA believes that the proposed rule goes too far in providing confidential protection of information, noting that the Act says such information should be protected only to the minimum extent necessary to protect legitimate competitive or proprietary interests of the provider (emphasis in MISPA comments). MISPA specifically disagrees with the mandatory protection contained in subsection 4(A)(2)(c). MISPA believes that the ability to affirmatively seek protection for any information provided under subsection 4(A)(2)(d) is not unduly burdensome.

A number of commenters (NECTA, AT&T, Verizon, and TAM) believe that all data filed under section 3 should be automatically protected because legitimate competitive or proprietary interests are at risk unless all data submitted by communications service providers are automatically protected. We agree and have revised subsection 4(A)(2)(c) of the rule.

NECTA adds that in recognition of the statutory makeup of the Authority, a provision should be added that states that proprietary or competitively sensitive information is reviewed by independent third parties or Authority staff. T-Mobile states that the rule should require specific procedures for storage, copying, reviewing, and returning or destroying all confidential materials that the Authority collects from service providers. In addition, a custodian of record should be identified. Access to the confidential data should be limited to staff, Authority members, and consultants, but with strict restrictions in place for Authority or Advisory Council members that are potential competitors. US Cellular agrees with T-Mobile's comments on section 4.

We believe that the State has procedures and requirements for archiving and handling confidential material sufficient to address the concerns regarding confidential material. With regard to limiting access to the data to potential competitors who are also Authority members or advisory board members, §9207(2) of the Act already allows any communications service provider to request that any of its confidential or proprietary data not be viewed by “those members of the authority who could gain a competitive advantage from viewing the information” and directs the authority to ensure “that there are adequate safeguards to protect the information.” The Authority will quickly act on any such request to ensure that confidential or proprietary information is suitably protected.<sup>7</sup> We may also develop a “code of conduct” for the Authority and Advisory Council members and staff that could address confidential and proprietary information.

F. Section 5 – Designation of Broadband Service and Eligible Areas

Section 5 of the rule establishes the methods to accomplish one of the primary purposes of the Act, to increase access to Broadband Service.

Many of the commenters (Peter Brown, MISPA, NECTA, Verizon, TAM, and Mainely Wired) stated that requiring an affirmative finding by the Authority before satellite service could be considered “broadband” was unnecessary and not “technology neutral,” because the criteria in subsections 5(A)(1) and 5(A)(2) was sufficient to determine performance. We agree and have deleted subsection 5(A)(4).

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<sup>7</sup> Subsection 9207(2) of the Act, A communications service provider may request that confidential or proprietary information provided to the authority under subsection 1 (of § 9207) not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

Many commenters stated that the initial standard for broadband was too high or too fast. NECTA suggested that the 1.5Mbps level could be a target, possibly for prioritizing or ranking proposals. A number of commenters recommended using the FCC definition of high speed which requires 200kbps in at least one direction. Mainely Wired suggested that the initial bandwidth standard be ten times what is typically available with dial-up connections as customers in rural areas previously on a dial-up service subscribing to a satellite or wireless product at 500kbps believe they have “broadband.” In an effort to strike a balance between being cautious with public funds and recognizing what the smaller broadband providers can provide in rural areas today, we will revise the rule, setting the initial standard at 500kbps in both directions, (bi-directional or synchronous service).

Many comments were received on the designation of “underserved area.” NECTA stated that the proposed definition of an underserved area was too vague and that no area should be defined as unserved or underserved if prior investment in the area would be diminished or future investment would be impeded or impaired by investment supported by the Authority. NECTA also suggests a more detailed description to describe underserved area is needed.

MISPA also suggests that the Authority define more clearly the terms in subsection 5(C)(1)(b), which say, “(T)he overall capacity, reliability, or quality of the broadband service available is inadequate to meet current or projected needs for the area.” We will not revise the rule because the Authority will consider the needs of an underserved area on a case-by-case basis based on submitted proposals and using the criteria in subsections 5(A)(1) and 5(A)(2) of the rule.

Both TAM and Verizon suggest adding “lowest cost” to subsection 5(C)(1)(a). This is a useful suggestion and we have added the language to the rule.

As Cingular states in its general comments about the proposed rule, it believes the Authority should focus on the “unserved” areas to maximize the impact of

its funding and minimize the impact on private industry. Therefore Cingular recommends that subsection 5(C)(2), Underserved Mobile Communications Service Areas, should be deleted. We agree that designating underserved areas for mobile communications service should not be a high priority of the Authority and will delete subsection 5(C)(2).

**G. Section 6 – ConnectME Authority Support**

Section 6 of the proposed rule describes how the Authority will provide support to eligible projects. Once an area is found to be unserved or underserved, it becomes an area where applicants and providers are eligible for financial support from the ConnectME fund and tax reimbursement from the State. We believe that the first priority of the Authority should be to provide assistance and funding solutions for unserved areas, especially for broadband service.

MISPA believes that the proposed structure of the support procedures are as detailed as they should be, and that going into more detail runs the risk of continuing the current stalemate for investment into underserved and unserved areas. MISPA urges the Authority not to carve out the methodology for grants in its rules. MISPA recommends a section be added to the rule that describes the role of the Advisory Council. We believe that the Advisory Council, working with the Authority, can define how it will best assist in furthering the goals of the Act as well as assist in developing the application process and we will not revise the rule.

NECTA, on the other hand, feels that section 6 should be rewritten to create a more detailed rule that will encourage private investment and assist a qualified provider in leveraging existing conditions into a viable business plan. NECTA provides a list of additional guidelines that we will consider when the Authority develops the application process.

NECTA also states a concern for overbuilding in any area regarding subsection 6(A)(1) which allows a 20% overlap into an existing broadband area. The reason for this provision is to recognize that some broadband solutions for an unserved area, fixed wireless for example, may unavoidably reach into the edges of an already sufficiently served area. These will be considered on a case-by-case basis.

An additional issue NECTA raises is the one year limitation on project completion. This concern is alleviated by the second sentence in subsection 6(B), which states, “Projects contained in approved proposals must be completed within one year of funding unless a waiver is granted by the Authority due to unique or unforeseen circumstances.” Mainely Wired also commented on the one year limitation. It suggested that the applicant should state a timeline and face a penalty if it does not meet its proposed deadline. This may also be addressed by the waiver mentioned above, which could be requested at the time of the application.

Other commenters also believe that the proposed rule lacks the details necessary to make the determination that an area or project is worthy of support. Verizon suggests that a “virtual business plan” and a process for conducting a market analysis are necessary. Verizon also states that the rule lacks a requirement for projects that must be completed within one year to continue service beyond this period.

TAM also comments on this aspect of section 6. TAM states that it should contain much more detail regarding cost-benefit analysis, prioritizing funding and need, methods for ranking proposals, and guidelines for applications. TAM provided a proposed amendment to replace section 6 in its entirety. TAM’s suggested replacement outlines two processes for obtaining support from the Authority. The first is the Bona Fide Request (BFR) process, taken from a similar program in Pennsylvania. TAM’s second suggestion is a process for obtaining Authority support for “targeted projects.” We will consider both of TAM’s suggestions in developing the project application, but will not add them to the rule.

Within 90 days of the effective date of this rule, the Authority and Advisory Council will develop a project application that will, at a minimum include requirements that the applicant provide a viable business plan, a cost/benefit analysis, and an indication of interest from potential customers. The Authority will also develop a method to rate and prioritize applications. Unserved areas where there are no prior plans to develop projects will be our first priority.

Both Verizon and TAM suggested that the waiver from subsection 6(B) be also included in subsection 6(F) (6(F) should have been numbered “6(G)” in the draft proposed rule). We agree and have revised the rule.

Verizon Wireless commented on Subsection 6(E) (6(E) should have been numbered “6(F)” in the draft proposed rule), Public Notice and recommends that it be changed to provide notice to carriers when applications are submitted to the Authority, not after the grant is awarded as the rule was drafted. We believe that subsection now numbered as 6(G) offers sufficient process for providers to notify the Authority of planned projects that may conflict with the project supported by the Authority.

#### H. Section 7, ConnectME Fund<sup>8</sup>

To generate the funds necessary to support the Authority (both the reasonable administrative costs of the Authority (§ 9204(2)(F)) and the ConnectME Fund (§ 9211)), the Act authorizes the Authority to assess Communications Service Providers an amount not to exceed 0.25% of the instate retail revenue received from all Communications Services provided to a location in Maine by Communications Service Providers (§ 9211(2)).

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<sup>8</sup> This is the name established by the Act to mean a nonlapsing fund administered by the Authority for the purposes of supporting the activities and projects of the authority under this chapter. (§ 9211(1))

Aroostook Internet expressed a concern that any new tax or surcharge on its business could stagnate its growth, but did not suggest an alternative means for funding the Authority.

In response to our request for comments on whether assessing communications services “provided to a location in Maine” is an administratively burdensome standard, AT&T and Verizon contend that the wording in the statute and the proposed rule does not provide sufficient guidance for determining whether a particular communications transaction has sufficient connection with Maine so that Maine can tax the transaction.<sup>9</sup> AT&T says that it is not clear whether the tax is limited to “intrastate” transactions in Maine.

AT&T and Verizon suggest computing the ConnectME Fund using the same methodology and base that is already reported by carriers for the Maine Service Provider Tax in M.R.S.A. 36 § 2552(1), which says, in part, “(A) tax at the rate of 5% is imposed on the value of the following services *sold in this state:....*,” followed by a listing of the various services covered that includes cable, satellite, and telecommunications services (emphasis added). Providers will be able to use the same data already collected for the Service Provider Tax, avoiding the need to create new systems to identify different information. Both companies also said that the Authority will be able to rely on the Maine Revenue Services to audit or verify amounts reported.

MISPA states that the proposed rule departs from the statutory language, which specifically refers to “revenue received or collected” for all communications service provided in this state. MISPA urges the Authority to reconcile the language of the rule with the statute. TAM is also concerned that the proposed rule does not follow the statutory language regarding reporting and assessments, especially the reference to

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<sup>9</sup> The statute, M.R.S.A. 35-A, § 9211(2), says, (T)he assessment may not exceed 0.25% of the revenue *received or collected* for all communications services *provided in this State* by the communications service provider. The proposed rule Chapter 101 (7)(B)(1), says, (A)sseSSments apply to all retail revenues derived from communications services *billed to a location* in Maine. (emphasis added)

“revenue received or collected.” TAM states that by leaving that language out of the rule a company may be liable for revenues that were billed, but never collected. We agree and have revised the rule to more closely follow the language of the Act.

NECTA makes comments similar to MISPA regarding changing the language of the proposed rule to match the statute. NECTA states further that the Federal Internet Tax Freedom Act (ITFA) imposes a moratorium on new state and local taxes on internet access which is due to expire November 1, 2007, but is expected to be renewed again. In NECTA’s opinion, the ITFA would prohibit applying the ConnectME Fund assessment on the cable industry’s high-speed internet products. We do not have sufficient record before us to reach any decision or conclusions on this issue. NECTA also suggests that there should be a minimum period of fund contribution prior to use of the ConnectME funds. We disagree, because this may hinder or discourage startup companies, but we will consider this issue in the application process.

Mainely Wired suggested that there should be a total demarcation between broadband service fees and retail revenue generated by other functions of the company and only broadband service fees should be assessed. The reporting requirement minimum of \$12,500 in quarterly revenues should be increased. According to Mainely Wired, a provider with this level of revenue (\$50,000/year) is obviously in start-up mode and cannot afford to take time to report or be deprived of revenue available. A \$75,000 quarterly revenue level would be an appropriate level to require reporting and assessment. At that level an operator would have the available reporting resources and would not be forced to neglect the build-up of the service in order to comply with Authority rules. An alternative would be a graduated assessment based on the number of customers. Mainely Wired also said that the Authority should try to get its funding from the Maine Universal Service Fund.

Based on the preponderance of comments on this section, we will revise the rule, adopting the process used by Maine Revenue Services for 36 M.R.S.A. § 2552, Service Provider Tax, with adjustments to fit the needs of the Authority and to

include or exclude providers as necessary. Those providers that currently pay the Service Provider Tax will be required to use the same method of calculation for gross revenues to submit the ConnectME assessment. Those providers that do not will be notified by the Authority's Fund Administrator regarding the assessment. We will develop procedures, forms, and the fund administration process within ninety days of the effective date of the rule.

I. Section 8, Waiver of Provisions of Chapter

None of the commenters had recommendations or concerns with this section of the proposed rule.

**IV. ORDER**

Accordingly, we order

1. That the attached Chapter 101, ConnectME Authority Operation, is provisionally adopted;

2. That a copy of the Order and the attached rule be sent to:

The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0015 (20 copies).

3. That notice of this Order is sent to:

All persons who indicated an interest in receiving information; and

All known Maine incumbent local exchange carriers, competitive local exchange companies, inter-exchange carriers, cellular companies, cable companies, internet service providers, and satellite service providers.

Dated at Augusta, Maine, this 28th day of December, 2006.

**BY ORDER OF THE AUTHORITY**

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Daniel B. Breton, Chair